

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 29

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

MAR 16 2004

DIRECTOR OFFICE
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Ex parte DAVID KESSLER,
ALAN C.G. NUTT and RUSSELL J. PALUM

MAILED

Appeal No. 2002-0621
Application No. 08/770,381

JAN 29 2004

PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

ON BRIEF

Before BARRETT, FLEMING and RUGGIERO, *Administrative Patent Judges*.

FLEMING, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

Appellants filed a request for rehearing on
November 24, 2003 of our decision entered September 26, 2003.

The request for rehearing is dismissed.

OPINION

Our original decision found the § 131 Declaration filed July 3, 2001, listed as Paper No. 17 on the file, not properly executed and, therefore, does not meet the requirements under 37 CFR § 1.131. The request for rehearing does not argue with our finding that the July 3, 2001, § 131 Declaration is defective, but instead, Appellants have submitted a newly signed Declaration for our consideration.

Reconsideration under 37 CFR § 1.197(b) must be based upon the same record as the original decision. It is not a vehicle for introducing new evidence that has not been entered and has not been considered by the Examiner. In *Ex parte Hindersinn*, 177 USPQ 78, 80 (Bd. App. 1971), it was held that a new argument advanced in a request for reconsideration but not advanced in the brief or reply brief is not properly before the Board because an argument advanced in such a manner has not afforded the Examiner an opportunity to respond to the new argument. "A party cannot wait until after the Board has rendered an adverse decision and then present new arguments in a request for reconsideration." *Cooper v. Goldfarb*, 154 F.3d 1321, 1331, 47 USPQ2d 1896, 1904 (Fed. Cir. 1998).

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Appellants' request for rehearing is denied.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

DENIED

Lee E. Barrett

LEE E. BARRETT
Administrative Patent Judge

Michael R. Fleming

MICHAEL R. FLEMING
Administrative Patent Judge

Joseph F. Ruggiero

JOSEPH F. RUGGIERO
Administrative Patent Judge

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MRF:psb

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